IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2007

CORAM

THE HONOURABLE MR.JUSTICE K.MOHAN RAM

W.P.No.11378 of 1998

E. Sheriff .. Petitioner

-Vs.-

Tamil Nadu State Express
Transport Corporation,
Division - I,
(formerly known as Tiruvalluvar
Transport Corporation)
represented by its General Manager,
Pallavan Salai, Chennai 600 002. .. Respondent

PRAYER:-

Petition under Article 226 of The Constitution of India praying for the issuance of a writ of Certiorified Mandamus after calling for the records relating to quash the Order No. 86963/A3/TETC (THA.Na.KO.1) / 96, dated : 7.8.1997 of the respondent and to consequently direct the respondent to provide work to the petitioner as counter clerk / Time Keeper by giving protection to the last drawn pay, forthwith a further direction to full backwages and continuity of service and all other attendant benefits and award costs.

For Petitioner : Mr. D. Hariparanthaman
For Respondent : Mr. V.R. Kamalanathan

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O R D E R

The short facts that are necessary for the disposal of the above writ petition are as follows:-

1. The Writ Petitioner who was working as a conductor with the respondent Corporation lost his right leg in an accident which occurred on 25.12.1990 while he was on duty. On account of the said accident, the petitioner was no more in a position to perform his duty as conductor. But, however he joined duty on 1.11.1991 after getting a fitness certificate to resume work. But, he was not able to perform his job as conductor. Hence, he was given light work as Reservation Counter Clerk / Time Keeper. As there was no need for the petitioner to stand or walk to discharge the duties of the Reservation Counter Clerk / Time Keeper, he was working as Reservation Counter Clerk / Time Keeper satisfactorily. While so, the petitioner was abruptly denied employment from 19.2.1997, by

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an oral order of the Branch Manager of the Marthandam Depot. He was informed that he would not be given the light work which he was doing continuously for six years. Hence, a representation was made by the petitioner to the Managing Director of the respondent Corporation, requesting them to continue to give him light work. The petitioner was directed to appear before the Medical Board on 24.06.1997. The Medical Board found that the petitioner is not fit to discharge the duties as conductor. On the basis of the report of the Medical Board, a show cause notice was sent to the petitioner to show cause as to why he should not be terminated from service. A reply was sent by the petitioner seeking to provide him with light work as was provided to him earlier. But not accepting the explanation and representation of the petitioner, the respondent passed the impugned order dated 07.08.1997 terminating his service with effect from 14.08.1997.

2. Though, the petitioner has challenged the impugned order on several grounds, the learned counsel for the petitioner putforth a new legal submission by relying on Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (herein after referred to as the Act). Section 47 of the Act reads as follows:

> "Non-discrimination in Government Employment:
>
> (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:
>
> Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:
>
> Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.
>
> (2) No promotion shall be denied to a person merely on the ground of his disability:
>
> provided that the appropriate Government may, having regard to the type of work as may be specified in such notification, exempt any establishment from the provisions of this section."

3. According to the learned counsel appearing for the petitioner, as the petitioner has acquired the disability during his service and he was found to be not suitable for the post of conductor, which he was holding, he should have been shifted to some other post with the same pay scale and service benefits. The learned counsel for the petitioner, relying upon the proviso to the said section, submitted that even if it is not possible to adjust the employee against any post, the petitioner is entitled to be kept on a supernumerary post until a suitable post is

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available or he attains the age of superannuation, whichever is earlier.

4. Countering the said submission made by the learned counsel for the petitioner, the learned counsel for the respondent Corporation submitted that after the Medical Board found the petitioner unfit to perform the duties of conductor and after observing all formalities, a settlement under section 18(1) of the Industrial Disputes Act, 1947 was entered into between the petitioner and the respondent Corporation and the petitioner was provided with alternative employment as Helper in the time scale of pay as per G.O.Ms.No.746, Transport dated 02.07.1981, G.O.Ms.No.1387, Transport Department dated 11.11.1989, G.O.Ms.No.316, Transport Department dated 09.11.1994 and as per the condition in item No.82 of 12(3) Wage Settlement in 1995. Therefore, according to him, as the petitioner had accepted alternative employment as Helper in terms of the settlement arrived at under section 18(1) of the Industrial Disputes Act, 1947, it is not open to the petitioner to challenge the impugned order.

5. The learned counsel for the petitioner submitted that the settlement arrived at under Section 18(1) of the Industrial Disputes Act, 1947 between the petitioner and the respondent Corporation cannot stand in the way of the petitioner claiming all the benefits which he is entitled to under Section 47 of the Act. In support of his said contention, the learned counsel relied upon the decision of a Division Bench of this Court, reported in "2007 WRIT L.R. 256 (THE STATE .VS. K. MOHAMMED MUSTAFA)" . In paragraph 6 of the said decision, it is observed as follows:

> " After having considered the contention raised by the learned counsel for the appellant, we are unable to accept the submission made by the appellant to the effect that giving all benefits under Section 47 would in any way derogate from the earlier Government Order passed by the Government. The main intention of the Government Order was to give employment to the person under disabilities. However, the question as to whether he should be paid at a particular scale cannot be considered as the essential aspect of the Government Order. The benefit envisaged under Section 47 can be considered in addition to the benefits contemplated under the Government Order. If any additional benefits or higher benefits are contemplated under the Act as compared to the rights conferred under G.O.Ms.No.746 dated 2.7.1981 and if such provisions of the Act are made applicable, it cannot be said that such action in any way derogates from the provisions incorporated in G.O.Ms.No.746 dated 2.7.1981. On the other hand, the same can be said to be additional provisions and a person is entitled to more beneficial provision available either under the Act or under the Government Order. In other words, if in a given case, the provisions contained in the G.O. Are more beneficial notwithstanding any provision contained in the Act,

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such beneficial provision of the G.O. Can be made applicable and similarly if the provisions contained in the Act are more beneficial as compared to the provisions contained in the G.O., benefit of such Act can be made available. In this connection, we also place reliance on the unreported decision of this Court in W.A.No. 136 of 2005 dated 25.8.2006, 2007-1-L.W. 161 (G.Muthu vs. The Management of Tamil Nadu State Transport Corporation (Madurai) Ltd., represented by its Managing Director, Madurai -10)."

6. The learned counsel also relied upon the decision of another Division Bench of this Court reported in "2004 WRIT L.R 398 (METROPOLITAN TRANSPORT CORPORATION ..VS.. THE PRESIDING OFFICER, PRINCIPAL LABOUR COURT AND ANOTHER) ". In the said Judgment in paragraphs 5 to 7, it is observed as follows:

" 5. Counsel for the appellant sought to rely on a government Order of the year 1981 which directs that the persons who are found medically unfit to continue to work on account of inter alia, of disability acquired during the course of employment should be treated only as a fresh recruits. It was therefore, claimed that the Government Order should be allowed to be implemented and the employees be treated as a fresh recruit.

6. We see no substance in this contention. That Government Order on which reliance was placed was made at a time when Parliament had not legislated with reference to persons who suffer from disabilities. Parliament having taken note of the plight of the disabled - either born disabled or those who acquired it later, has legislated a special enactment for their benefit - " The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995".

7. That Act was enacted in the year 1995. Most of the agencies of the Government as also public at large appear to have remained quite ignorant of it's beneficial provisions and not enough care has been taken by those concerned to ensure the benefits conferred by that Act are in fact extended to those entitled thereto."

7. If the facts of the present case are considered in the light of the above said decisions, it could be seen that neither the petitioner nor the respondent Corporation appear to have been aware of the beneficial provisions of the Act. When the respondent Corporation which is wholly owned Company of the State Government itself was not aware of the

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beneficial provisions of the Act and has entered into a settlement with the petitioner under section 18(1) of the Industrial Disputes Act, 1947, the petitioner, who was only a conductor, cannot be expected to be aware of the provisions of the Act. As observed by the Division Bench of this Court in "2007 WLR Page 256", the benefit envisaged under section 47 of the Act can be considered to be in addition to the benefits contemplated under the Government Order. If any additional benefits or higher benefits are contemplated under the Act as compared to the rights conferred under G.O.Ms.No.746 dated 2.7.1981 and if such provisions of the Act are made applicable, it cannot be said that such action in any way derogates from the provisions incorporated in G.O.Ms.No.746 dated 2.7.1981. On the other hand, the same can be said to be additional provisions and a person is entitled to more beneficial provision available either under the Act or under the Government Order. In this case, the Section 18(1) settlement between the petitioner and the respondent Corporation was entered into only in terms of G.O.Ms.No.746 dated 2.7.1981. As stated above, neither the petitioner nor the respondent Corporation were aware of the beneficial provisions of the Act. As such, the contentions of the Transport Corporation that as the petitioner had entered into a settlement under section 18(1) of the I.D. Act, the petitioner is estopped from invoking the provisions of Section 47 of the Act cannot be countenanced. It is well settled that there cannot be estoppel against a statute. When the petitioner is clothed with a legal right to claim all the benefits as per Section 47 of the Act, the said right cannot be taken away on the basis of the said 18(1) settlement. As stated above, the settlement itself was arrived at in terms of the above said Government Orders and when the provisions of Section 47 are more beneficial to the petitioner, it is always open to him, to invoke the same and claim the benefits. The ratio laid down by the two Division Bench decisions referred to supra squarely apply to the facts of this case. Therefore, the contention of the learned counsel for the respondent is liable to be rejected and accordingly rejected.

8. When the petitioner is entitled to the benefits of the provisions contained in Section 47 of the Act, the same should have been extended by the respondent Corporation but instead, by invoking G.O.746 had entered into a settlement under section 18(1) of the I.D. Act with the petitioner and provided the job of Helper, which post carries a lesser pay scale, which in the considered view of the Court is against the beneficial provisions contained in Section 47 of the Act. Therefore, this Court is of the view that the impugned order is liable to be quashed and accordingly quashed and the Writ Petition is allowed. However, there will be no order as to costs.

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Sd/-
Asst.Registrar

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Sub Asst.Registrar

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To:
The General Manager,
Tamil Nadu State Express
Transport Corporation,
Division - I,
(formerly known as Tiruvalluvar
Transport Corporation)
Pallavan Salai, Chennai 600 002.

+1 cc to Mr.D.Hariparanthaman, Advocate Sr.No.43273.

+1 cc to Mr.V.R.Kamalanathan, Advocate Sr.No.42662.

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